IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 6488 of 1997

For Approval and Signature:

HONOURABLE MS.JUSTICE H.N.DEVANI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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ILABEN MUKTESHBHAI PATEL - Applicant(s)
Versus
RAJESH LAVJIBHAI MAKWANA & 1 - Respondent(s)

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Appearance :
MR MUKTESH V PATEL for petitioner
MR SANJAY D SUTHAR for Respondent(s) : 1,
MR AY KOGJE, ADDL. PUBLIC PROSECUTOR for Respondent(s) : 2,

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CORAM : HONOURABLE MS.JUSTICE H.N.DEVANI

Date : 18/12/2007

ORAL JUDGMENT

1. By this petition under Section 482 of the Code of Criminal Procedure, 1973 (the Code), the petitioner seeks the following reliefs :

> *"[A] To admit this petition.*
>
> *[B] To call the Investigating Officer of Kalupur Police Station for the complaint of the petitioner and the complaint of the opponent dated 25/10/97 from Kalupur Police Station.*
>
> *[C] To order the Investigating Officer to take action against the opponent accused for the complaint of the petitioner dated 25/10/97 given by telegram on 25/10/97.*
>
> *[D] To stay the proceedings of Criminal Case No.4004/97 of Kalupur Police Station.*
>
> *[E] To quash the proceedings of the complaint of Rajesh Lavajibhai Makwana dated 25/10/97 against Ilaben Mukteshbhai Patel for the offence under sections 323, 355, 506(1) of Kalupur Police Station.*
>
> *[F] To order the police not to arrest the petitioner for the complaint of Rajesh Makwana against the petitioner till this matter is not disposed of and further be pleased to protect the petitioner*

against the opponent's complaint.

[G] Any reliefs deemed fit in the circumstances may be kindly granted."

2. By a complaint dated 25th October, 1997, the respondent No.1 herein, who also happens to be the husband of the petitioner, has lodged an FIR before the Kalupur Police Station vide C.R. No. 4004/1997, for the offences under Sections 323, 355 and 506 of the Indian Penal Code (IPC), alleging that, on 25.10.1997, while he was at his office, during the course of his duties, his wife (the present petitioner) had come to his office, and on seeing him, had suddenly got excited and started hurling abuses at him. That it being 2.15 hrs. in the evening, the office hours were over, hence, he was talking with his friends. At that time, the petitioner had come near him and suddenly caught hold of his collar and slapped him on his right cheek, and while leaving she had threatened him that she would kill him within two months. It is also stated therein that earlier the petitioner had filed a complaint against him in the Court, and that, as a case regarding maintenance was going on, she had come and quarreled with him.

3. Quashment of the aforesaid FIR is sought for in the present petition.

4. It is the case of the petitioner, as stated in the petition, is that, on 25.10.1997, she was passing by Oriental Building in which the office of her husband is situated and at that

time, one Sanat Bhatt, a friend of her husband had forcibly taken her daughter away to the place where the respondent No.1 was in the office of Life Insurance Corporation, Oriental Building. That the petitioner went to the office to demand the custody of her daughter, but the opponent and seven others did not handover the custody of her daughter to the petitioner, and that, instead, the respondent No.1 told the petitioner to withdraw her cases against him and give him divorce, otherwise she would be murdered. Therefore, she had sent a telegram to the Police Commissioner and Police Inspector, Kalupur Police Station on the same day. The said telegram is annexed along with the petition.

5. It is the case of the petitioner that the complaint filed by the petitioner in the present case is a false complaint, and that, the police were not taking action on her complaint while they were acting upon the complaint given by her husband.

6. In response to the averments made in the petition, the respondent No.1 has filed an affidavit in-reply wherein he has denied the allegations made in the petition. He has re-affirmed the complaint lodged by him and has stated that the incident had taken place in his office in the presence of all the staff members, and that even the Branch Manager has come out of his chamber and asked the petitioner to stop quarreling and shouting in the office. He has annexed a copy of the letter of the Branch Manager addressed to the Manager (P & IR) dated 25.10.1997 as well as a letter of the same date addressed

to the petitioner herein, requesting her not to visit the office for her personal family problems as she was disturbing the peaceful atmosphere of their office.

7. The petitioner has filed a rejoinder to the said affidavit in-reply, reiterating the averments made in the petition.

8. Heard Mr.K.J.Shethna, learned advocate with Mr.Muktesh Patel, learned advocate for the petitioner, Mr.Sanjay Suthar, learned advocate for respondent No.1 and Mr.A.Y.Kogje, learned Additional Public Prosecutor for respondent No.2 – State of Gujarat.

9. Mr.K.J.Shethna, learned advocate for the petitioner submitted that, on a plain reading of the First Information Report, it is apparent that the allegations made therein are too fantastic to be true. It was submitted that the First Information Report in question is a sequel to the telegram which was sent against respondent No.1 regarding the conduct of the complainant. It was submitted that the daughter of the petitioner was forcibly taken away, but the police did not take any action as regards the case under Section 363 of the IPC. It was urged that, in every criminal case, its background is required to be seen. It was submitted that, after the telegram was sent, the FIR in question was lodged which was in the nature of the counter-blast to the telegram sent by the petitioner.

10. Learned advocate for the petitioner submitted that none of the ingredients of the offences alleged against the

petition are made out in the complaint, and that an attempt in futility was made to make the offence cognizable. It was further submitted that, in the FIR, it is merely stated that dirty abuses were hurled at the complainant. It was submitted that as to whether the abuses in question would amount to an offence can be assessed only on the basis of the actual words which are used. It was submitted that, in absence of the actual utterances made by the petitioner, no offence in this regard can be said to have been made out. Referring to the complaint in question, it was pointed out that the complaint also refers to the petitioner having filed a complaint against the complainant as well as to the fact that the proceedings as regards maintenance case are also pending before the Court. It was submitted that, in these circumstances, it is evident that the complaint is a motivated one.

11. In support of his contentions, the learned advocate for the petitioner placed reliance upon the following decisions :

[a] The decision of this Court in the case of ***Kesarisinh Mojisinh Yadav v. Shantaben w/o Bhimsinh Amarsinh Vasava***, 1997 Cr.L.J. (Gujarat) 467.

[b] The decision of the Supreme Court in the case of ***State of Karnataka v. L.Muniswamy and others***, (1977)2 SCC 699.

[c] The decision of the Supreme Court in the case of

Madhavrao Jiwaji Rao Scindia v. Sambhajirao Chandrojirao Angre, AIR 1988 SC 709.

[d] The decision of the Supreme Court in the case of ***State of Haryana v. Bhajan Lal and others***, 1992 (Supp) (1) SCC 335.

[e] The decision of the Supreme Court in the case of ***Hriday Ranjan Prasad Verma v. State of Bihar***, (2000)4 SCC 168.

[f] The decision of the Supreme Court in the case of ***State of U.P. Through CBI v. R.K.Srivastava***, (1989)4 SCC 59.

12. In conclusion, it was submitted that the ends of justice requires quashing of the complaint and consequent proceedings. It was submitted that the mental torture and cruelty meted out to the petitioner was to such an extent that a false complaint had been filed and anticipatory defences have been prepared.

13. Mr.Sanjay Suthar, learned advocate for the respondent No.1 vehemently opposed the petition. It was submitted that the respondent No.1's complaint was prior in point of time. Drawing attention to the telegram sent by the petitioner, it is pointed out that the time of occurrence of the incident mentioned therein is 3.00 p.m., whereas the incident in respect of which the respondent No.1 had lodged the FIR has occurred at 2.15 p.m. on the same day. It was, accordingly, submitted that the narration of

facts shows that his complaint is prior in point of time.

14. It was next contended that the allegations made in the FIR are corroborated by the letter of the Branch Manager. Thus, the allegations made in the FIR are duly corroborated and as such, the same are required to be investigated. It was submitted that the complaint is required to be read as it is and that, on the face of the allegations made in the FIR, it is apparent that they constitute the offences alleged therein.

15. Referring to the FIR in question, it was submitted that the allegation against the petitioner is that, (1) She has used abusive language, (2) held the respondent by his collar and slapped him, and issued threats that she would murder him. It was submitted that all these allegations constitute an offence and thus, require investigation. It was further submitted that no prejudice is going to be caused by further investigation and that, investigation cannot in any manner be said to be an abuse of process of law. It was further submitted that this Court should exercise powers under Section 482 of the Code only when there is an abuse of process of law and only if on reading the complaint, no offence is made out, can the complaint be quashed. It was submitted that a bare perusal of the complaint shows that the allegations made therein constitute the offences alleged and the present case, therefore, does not fall within the purview of Section 482 of the Code so as to warrant any intervention by this Court.

16.Mr.A.Y.Kogje, learned Additional Public Prosecutor for the respondent No.2 – State of Gujarat has adopted the submissions made by Mr.Suthar, learned advocate for the respondent No.1.

17.In rejoinder, Mr.K.J.Shethna, learned advocate for the petitioner has reiterated the submissions made earlier and has submitted that, on an overall view of the matter, it would be in the larger interest of justice to quash the First Information Report.

18.In the First Information Report dated 25th October, 1997 lodged by the respondent No.1 against the present petitioner, it has been stated that, while the respondent No.1 was discharging duties at his office on 25th October, 1997, his wife, namely the present petitioner, came to the office, and on seeing him suddenly got excited and started hurling abuses at him. That it was 2.15 p.m. in the afternoon and duty hours were over, therefore, he was talking with his friends. At that time, the petitioner came near him and suddenly caught hold of his collar and slapped him on his right cheek, and while leaving, told him that she would kill him within two months. It is further stated in the complaint that the petitioner had lodged a complaint against him in the Court and that, a petition for maintenance was also going on, because of which the petitioner had quarreled with him.

19.The petitioner has also annexed with the petition a copy of a telegram dated 25th October, 1997 addressed to the Police Commissioner, Shahibag, Ahmedabad as well as

Police Inspector, Kalupur Police Station, wherein she has alleged that the respondent No.1 and seven persons have kidnapped her daughter and threatened her to withdraw the cases and divorce him, otherwise she would be murdered. It is stated in the telegram that the incident occurred at 3.00 p.m. near Oriental Building, and that, by great difficulty, the petitioner had obtained the custody of her daughter from them.

20. From the aforesaid, it appears that counter complaints have been lodged by both the parties.

21. In response to the averments made in the petition, the respondent No.1 has filed an affidavit in-reply. Along with the affidavit in-reply, he has annexed copy of a letter dated 25th October, 1997 written by the Branch Manager, Life Insurance Corporation of India to his Manager,, which is re-produced hereinbelow :

> *"Re: Office disturbing behaviour of Madam Ila Mukteshbhai Patel, so called wife of Shri R.I.Makwana, D.O. (2240).*
>
> *The abovenamed person came to our Branch premises at Second floor at about 2.15 p.m. today on 25-10-97, Saturday. At that time, I was busy with policy holder in my chamber. I heard loud shouting by somebody outside my chamber. I immediately came out of my chamber and found that one lady was shouting and she was discussing with my two Development Officer, Shri R.L.Makwana*

and Shri S.D.Bhatt. I enquired with that lady for the reasons of shouting. At that time, my SBM(S), Shri R.K.Parmar was also present. The said lady introduced herself as a wife of our Development Officer, Shri R.L.Makwana, (D.O.Code No.2240 and S.R.No.493560) and she has got some personal and family problem with him. I informed the lady to stop shouting and not to disturb the office atmosphere for her personal problems. I also warned her not to visit the office for this matter. After that, she left that branch. Afterwards, Shri R.L.Makwana along with above stated two D.Os. came to my chamber and reported me that so called lady hold his collar and slapped upon his face. He also told that there is a court case under process and he is going to lodge a police complaint for that. As this incidence occurred in my branch, I would like to bring to your notice and for your necessary action if need be."

22. The respondent No.1 has also annexed a letter dated 25.10.1997 written by the Branch Manager, Life Insurance Corporation of India, with reference to her visit to their LIC Office, Branch No.7/839, on 25.10.1997 at 2.15 p.m., whereby the petitioner has been requested not to visit the office for the purpose of her personal and family problems. The petitioner is warned that if she visits office for her personal reasons and disturbs the office atmosphere, they would take appropriate action against her.

23. Though it is well settled that, while deciding an application for quashing of a complaint under Section 482 of the Code, the Court is required to look into the allegations made in the complaint, and if the said allegations are found to constitute the offences alleged, normally the Court should not interfere. However, considering the peculiar background of the present case, this Court has, while considering the application for quashing the complaint dated 25.10.1997, also taken into consideration the telegram dated 25.10.1997 addressed by the petitioner to the respondent as well as letters addressed by the Branch Manager, LIC, which have been annexed by the respondent No.1 with his affidavit in-reply. A conjoint reading of the First Information Report and the letter dated 25.10.1997 addressed by the Branch Manager to the Manager, LIC, it appears that the facts, as stated in the complaint, do not present the true and correct picture of the incident, which appears to have occurred at the office of the respondent No.1. According to the complaint, the petitioner had come to the office of the respondent No.1, and on seeing him, got excited, abused him, caught hold of his collar, and slapped him on the right cheek and thereafter, while leaving, threatened to kill him. Whereas, in the letter dated 25.10.1997, the Branch Manager has stated that, upon hearing loud shouting outside his chamber, he came out and saw a lady was shouting and discussing with his two Development Officers Shri R.N.Raval and Shri S.D.Bhatt. He inquired from the lady the reasons for shouting and that, at the relevant time, his S.B.M.(S) Shri R.K.Parmar was also present. The lady introduced herself as the wife

of their Development Officer, namely respondent No.1 and told him that she had some personal and family problems with him. That he informed the lady to stop shouting and not to disturb the office atmosphere for her personal problem and warned her not to visit the office, after which she left the Branch Office. Subsequently, the respondent and their two Development Officers came to his chamber and reported to him that the said lady had caught hold of his collar and slapped on his face.

24. According to the complaint lodged by the respondent No.1, the petitioner left the premises after slapping him and threatening him, whereas, according to the version given by the Branch Manager, when he came out, the petitioner was shouting and discussing with two Development Officers and was left after he asked her to leave the premises. It appears that the respondent was not even present at that time. Therefore, two conflicting versions have come on record, both put forth by the respondent No.1, one as stated in the complaint as well as the second one as stated by the Branch Manager. Moreover, the timings stated in the complaint as well as by the Branch Manager are the same i.e. 2.15 p.m.

25. Learned advocate for the petitioner has also contended that the allegations made in the complaint are so absurd, improbable and are so fantastic that they cannot reasonably be held to be true. Examining the said contention on the basis of the facts stated in the complaint, to a certain extent, the learned advocate for the petitioner seems to be justified. In the complaint

itself, it is stated that the respondent was at his office and was talking with his friends, and that, at that time, the petitioner (a lady) came to the premises, abused him, slapped him and left the premises after threatening him. The allegations prima facie appear to be quite unbelievable, in that, it would not be possible for a lady alone to have not only abused the complainant, but had also slapped him and threatened him, and that too, in his own office premises, in the presence of his friends. Moreover, considering the fact that a criminal complaint had also been filed by the petitioner prior to the complainant filing the complaint and the proceedings for maintenance having been pending before the concerned court, the contention of the learned advocate for the petitioner that the complaint is motivated one, also cannot be totally discarded.

26. This Court, in the case of ***Kesarisinh Mojisinh Yadav v. Shantaben w/o Bhimsinh Amarsinh Vasava***, (supra), has held that the Court is expected to apply mind as a man of common prudence about the nature of allegations made, background under which are made and if leads to absurdity or improbability, the Court must refrain from exercising discretion so as to prevent abuse of process and needless harassment. In the case of ***State of Karnataka v. L.Muniswamy and others***, (supra), the Supreme Court has held that, in the exercise of the wholesome powers under Section 482 of the Code, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or

that the ends of justice require that the proceeding ought to be quashed. The saving of the High Court's inherent powers, both in civil and criminal matters, is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. The ends of justice are higher than the ends of mere law though justice has got to be administered according to laws made by the Parliament. In the opinion of the Court, the proposition that, so long as there is some material on the record to connect the accused with the crime, the case must go on and the High Court has no jurisdiction to put a precipitate or premature end to the proceedings on the belief that the prosecution is not likely to succeed, is too broad a proposition to accept. The Court held that considerations justifying the exercise of inherent powers for securing the ends of justice naturally vary from case to case and a jurisdiction as wholesome as the one conferred by Section 482 ought not to be encased within the strait-jacket of a rigid formula.

27. In the case of ***Madhavrao Jiwaji Rao Scindia v. Sambhajirao Chandrojirao Angre***, (supra), the Supreme Court has held as follows :

> *"[7] The legal position is well-settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the Court is as to whether the uncontroverted allegations as made prima facie establish the offence. It is also for the Court to take into consideration any special features*

which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. This is so on the basis that the Court cannot be utilised for any oblique purpose and where in the opinion of the Court chances of an ultimate conviction are bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the Court may while taking into consideration the special facts of a case also quash the proceeding even though it may be at a preliminary stage."

28. In the background of the facts noted hereinabove, on the basis of the material brought on record by the respondent No.1, there are inherent inconsistencies in the versions as given in the First Information Report and the letter of the Branch Manager on which reliance is placed upon by the respondent No.1. Moreover, considering the cross complaint filed by the petitioner as well as the fact that the petitioner has earlier also lodged some complaint against the respondent No.1 and some proceedings in connection with a claim for maintenance is also pending in the court, the possibility of the First Information Report being a motivated one cannot be ruled out. Besides as noted earlier, the allegations made in the complaint appear to be quite improbable considering the manner, time and place in which the incident is alleged to have occurred. Hence, applying the principles enunciated in the decisions cited hereinabove to the facts of the present case; this Court is of the view that the FIR in

question cannot be sustained.

29. In the leading case of ***State of Haryana and others v. Bhajan Lal and others***, 1992 Supp. (1) SCC 335, the Supreme Court has inter alia held that power under Section 482 of the Code should be exercised where the allegation made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused. Examining the present case in the light of the aforesaid, on an overall view of the matter, this does not appear to be a case where it is possible to reach a just conclusion that there is sufficient ground for proceeding against the petitioner.

30. For the foregoing reasons, in the view of this Court, continuation of the proceedings would amount to an abuse of the process of law. In the circumstances, the First Information Report lodged with the Kalupur Police Station vide C.R. No.4004/97 is required to be quashed.

31. In the peculiar facts of the present case, when cross cases have been filed against each other by the parties and the future of an innocent child, viz., the daughter of the petitioner and respondent No.1, is at stake, this Court finds that it would be in the interest of justice not to entertain the petition insofar as the reliefs prayed for vide paragraph 5[B] and [C] are concerned.

32. In the result, the application partly succeeds and is,

accordingly, allowed to the aforesaid extent. The First Information Report lodged before the Kalupur Police Station being C.R. No. 4004/1997, is hereby quashed. Rule is made absolute to the aforesaid extent.

[HARSHA DEVANI, J.]

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